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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1950.
Nos. 15 and 16 (Consolidated).

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation,
Petitioner,
v.
WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court,
Respondent.
No. 15.

STATE OF MISSOURI ex rel. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Petitioner,
v.
DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court,
Respondent.
No. 16.

BRIEF FOR RESPONDENTS.

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BRIEF FOR RESPONDENTS.

STATEMENT.

The above styled cases are here on writs of certiorari awarded by this Court on March 27, 1950 (R. 80, 81), to review the final judgment, opinion and decision of the

Supreme Court of Missouri entered and rendered in two consolidated causes (R. 65) on October 10, 1949 (R. 67-76). The two cases involve parallel sets of facts and identical questions of law, and are briefed together here under a single cover, but with separate statements of fact containing appropriate page references to the consolidated printed record in this Court.

Opinions of the Courts Below.

In case No. 15, the trial court filed a memorandum opinion which appears at pages 28-30 of the printed record here, but not otherwise reported. In case No. 16, no opinion was rendered by the trial court.

The opinion of the Supreme Court of Missouri, in both cases, which were consolidated in that court, is reported as **State ex rel. Southern Ry. Co. v. Mayfield, Judge,** and **State ex rel. Atchison, T. & S. F. Ry. Co. v. Murphy, Judge,** 359 Mo. 827, 224 S. W. 2d 105, and appears at pages 67-75 of the printed record here.

Summary Statement of the Cases.

We find ourselves unable to accept petitioners' statements of the cases, insofar as such statements undertake to state the theories of the courts below, and, accordingly, make a statement of our own.

In case No. 15, Lelia M. Blevins, who had been appointed administratrix of the estate of Roderick M. Blevins by a Tennessee court, filed an action on October 13, 1948, against the Southern Railway Company, a Virginia corporation, licensed to do business in Missouri (R. 1), relator below, in the Circuit Court of the City of St. Louis, Missouri, seeking damages of $100,000.00 under the Federal Employers' Liability Act (45 U. S. C. A., §§51-60) on account of the death of said Roderick E. Blevins while in

the employ of said relator (R. 2, 19-24, 31, 32-33). Both the administratrix and the deceased were residents of the State of Tennessee, and the fatal injury to and death of the deceased occurred in Tennessee (R. 2, 25). In due course, on November 13, 1948, said relator moved to dismiss on the ground of inappropriate forum within the doctrine of forum non conveniens (R. 2, 24-27); and on March 14, 1949, the presiding judge of said Circuit Court denied the motion on the sole ground that he had no jurisdiction or discretion to entertain or grant it (R. 2, 28), and filed a memorandum opinion predicating his decision upon the Missouri constitutional and statutory provisions as construed by the Missouri decisions (R. 28-30). On March 31, 1949, relator below filed in the Supreme Court of Missouri its petition for a writ of mandamus to compel the presiding judge of said Circuit Court to exercise jurisdiction over, and to rule upon the merits of, said motion to dismiss (R. 1-30), and on April 11, 1949, the Supreme Court of Missouri issued its alternative writ of mandamus (R. 30-31), to which the respondent below duly made his return (R. 31-35).

In case No. 16, Floyd P. Seachris, a citizen and resident of the State of Oklahoma (R. 53), filed an action on February 15, 1949, against the Atchison, Topeka & Santa Fe Railway Company, a Kansas corporation, licensed to do business in Missouri (R. 36), relator below, in the Circuit Court of the City of St. Louis, Missouri, seeking damages of $100,000.00 under the Federal Employers' Liability Act (45 U. S. C. A., §§51-60) for personal injuries sustained by him while in the employ of said relator company at Waynoka, Oklahoma (R. 37, 49-52). In due course, on April 25, 1949, said relator company moved to dismiss on the ground of inappropriate forum within the doctrine of forum non conveniens (R. 37, 53-57), and on May 4, 1949, the presiding judge of said Circuit Court—being the same trial court judge as in case No. 15, the Hon.

William L. Mason, now deceased—denied the motion on the sole ground that he had no jurisdiction or discretion to entertain or grant it (R. 37, 58), but he filed no opinion. Thereafter, relator below filed in the Supreme Court of Missouri its petition for a writ of mandamus to compel the presiding judge of said Circuit Court to exercise jurisdiction over, and to rule upon the merits of, said motion to dismiss (R. 36-58), and on June 13, 1949, the Supreme Court of Missouri issued its alternative writ of mandamus (R. 58-59), to which respondent below duly made his return (R. 60-64).

Thereafter, the Supreme Court of Missouri, upon motion of the two relators below (R. 65), consolidated the two mandamus proceedings (R. 66), which were then heard together (R. 66).

Thereafter, the Supreme Court of Missouri entered judgment quashing its alternative writs of mandamus in both cases (R. 76), predicating such judgment upon an opinion (R. 67-75; reported at 359 Mo. 827, and 224 S. W. 2d 105).

Basis for the Decision Below.

In these cases, the Supreme Court of Missouri clearly and unequivocally held and ruled that:

1. The Federal Employers' Liability Act does not compel the courts of Missouri to take jurisdiction of actions under that act, but it empowers them to do so (R. 74; 224 S. W. 2d, l. c. 110).

2. Missouri permits its citizens to maintain in its court actions under the Federal Employers' Liability Act (45 U. S. C. A., §§ 51-60), irrespective of where the cause of action may have arisen and irrespective of consideration of matters of expense, inconvenience or harassment (R. 74; 224 S. W. 2d, l. c. 110).

3. Under the **Miles** case (315 U. S. 698) and the **Kepner** case (314 U. S. 44) the doctrine of forum non conveniens is not applicable to actions brought under the Federal Employers' Liability Act in state courts (R. 73; 224 S. W. 2d, l. c. 109; R. 74; 224 S. W. 2d, l. c. 111).

4. The enactment of Section 1404 (a) of the Judicial Code [28 U. S. C. A., § 1404 (a)] by the Act of June 25, 1948, c. 646, 62 Stat. 869 et seq., did not change the law announced in the **Miles** and **Kepner** cases as aforesaid (R. 70; 224 S. W. 2d, l. c. 108).

5. Missouri has no statute which gives the courts of that state discretionary power to dismiss an action brought by a non-resident as distinguished from a citizen of that state (R. 73-74; 224 S. W. 2d, l. c. 110).

6. Since Missouri allows its residents to bring and maintain in its courts actions under the Federal Employers' Liability Act, to not allow citizens of other states the same right, by the application of a theory of "forum non conveniens," would violate the Privileges and Immunities clause of Article IV, Section 2, of the Constitution of the United States (R. 74-75; 224 S. W. 2d, l. c. 110).

7. The doctrine of forum non conveniens was not open to relators below (petitioners here) in the two Federal Employers' Liability Act cases in the Missouri circuit court (R. 75; 224 S. W. 2d, l. c. 111).

8. The Missouri circuit court had, and had correctly ruled that it had, no jurisdiction or discretion to hear or determine the motions to dismiss, grounded upon forum non conveniens, in the cases pending in such circuit court (R. 75; 224 S. W. 2d, l. c. 111).

QUESTIONS PRESENTED.

The petitioners, at pages 4-5 and 10 of their briefs, have stated four questions which they consider to be involved here. Because we believe the questions posed by petitioners, which are so framed as to require negative answers, and which erroneously assume that Section 6 of the Federal Employers' Liability Act denotes something respecting forum non conveniens[1] and that all state courts have a discretion to apply the doctrine of forum non conveniens, are not the real questions here involved, we state the questions which we believe to be here presented, as follows:

1. Does this Court have jurisdiction to review a decision of the highest court of a state based, essentially, upon a ruling that the local laws of the state divest the courts of such state of any jurisdiction or discretion to decline to hear and determine transitory causes of action, by whomsoever brought, without consideration of matters of expense, inconvenience and harassment, and irrespective of whether arising under state or federal law?

2. Does this Court have jurisdiction to review a decision of the highest court of a state based, independently and adequately, upon a question of the limits of the jurisdiction of the courts of such state?

3. Does a state court, when its ordinary jurisdiction is appropriate and adequate, and where the particular state has no statute giving its courts discretion to retain or relinquish jurisdiction of transitory actions upon considerations of expense, inconvenience and harassment, but, on the contrary, has a policy established by its constitutional and statutory provisions to permit access to its

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1 This Court, in Ex parte Collett, 337 U. S. 55, 61, clearly stated that "* * * the words selected by Congress for § 6 denote nothing, one way or the other, respecting forum non conveniens, * * *."

courts by all persons for such actions, have authority to apply the doctrine of forum non conveniens in Federal Employers' Liability Act cases brought in such state court?

4. Has the established doctrine of this Court, that forum non conveniens is not applicable to Federal Employers' Liability cases in state courts, been in any wise modified by the revision of the Judicial Code by the Act of June 25, 1948, c. 646, 62 Stat. 869, et seq.?

5. When, under local laws, a state permits its citizens to maintain its courts' actions under the Federal Employers' Liability Act, irrespective of questions of expense, inconvenience or harassment, can the courts of such state deny the same right to non-citizens upon the theory of forum non conveniens?

SUMMARY OF THE ARGUMENT.

I.

To give this Court jurisdiction of these cases, it must appear that there is a federal question involved which is decisive, and, if the decision of the Supreme Court of Missouri rests upon a non-federal ground, which independently and adequately supports the State court's judgment, this Court will not exercise jurisdiction.

Kalb v. Feuerstein, 308 U. S. 433, 60 S. Ct. 343, 84 L. Ed. 370;

Honeyman v. Hanan, 300 U. S. 14, 57 S. Ct. 350, 81 L. Ed. 476;

Lynch v. New York ex rel. Pierson, 293 U. S. 52, 55 S. Ct. 16, 79 L. Ed. 191;

Enterprise Irrigation Dist. v. Farmers Mutual Canal Co., 243 U. S. 157, 37 S. Ct. 318, 61 L. Ed. 644;

West Chicago Street R. Co. v. People of Illinois ex rel., 201 U. S. 506, 26 S. Ct. 518, 50 L. Ed. 845;

Chicago, B. & Q. R. Co. v. State of Illinois ex rel., 200 U. S. 561, 26 S. Ct. 341, 50 L. Ed. 596;

Brown v. Atwell, 92 U. S. 327, 23 L. Ed. 511;

Murdock v. City of Memphis, 20 Wall. 590, 87 U. S. 590, 22 L. Ed. 429;

Klinger v. State of Missouri, 13 Wall. 257, 80 U. S. 257, 20 L. Ed. 635.

II.

The decision of the Supreme Court of Missouri here sought to be reviewed rests upon a non-federal ground which independently and adequately supports the State court judgment. That Court ruled essentially that, under the constitutional and statutory provisions of that State, the courts of such State were without discretion to refuse

to entertain jurisdiction, upon consideration of expense, inconvenience or harassment (forum non conveniens), of actions based upon a transitory causes of action—including actions under the Federal Employers' Liability Act—brought by a citizen of that State, and, therefore, were without such discretion respecting similar actions brought by others.

State ex rel. Southern R. Co. v. Mayfield, 359 Mo. 827, 224 S. W. 2d 105, 110 [4];
Printed Record in this cause, pp. 74-75;
Authorities cited under Point I, supra;
Art. 1, Sec. 14, Constitution of Missouri, 1945;
Art. 1, Sec. 10, Constitution of Missouri, 1945;
Sec. 14, Civil Code of Missouri, 1943;
Laws of Mo., 1943, p. 353, 360 (Mo. R. S. A., § 847.14);
State ex rel. Pacific Mutual Life Ins. Co. v. Grimm, 239 Mo. 135, 143 S. W. 483;
Gold Issue Mining & Milling Co. v. Pennsylvania Fire Ins. Co., 267 Mo. 524, 184 S. W. 999;
British-American Portland Cement Co. v. Citizens Gas Co., 255 Mo. 1, 164 S. W. 468;
Burg v. Knox, Mo. Sup., 67 S. W. 2d 96;
Wells v. Davis, 303 Mo. 388, 261 S. W. 58;
State ex rel. Foraker v. Hoffman, 309 Mo. 625, 274 S. W. 362;
Shaw v. Chicago & A. R. Co., 314 Mo. 123, 282 S. W. 416;
Bright v. Wheelock, 323 Mo. 840, 20 S. W. 2d 684;
Ex parte State ex rel. Southern Ry. Co., Ala. Sup., 47 So. 2d 249.

III.

The decision of the Supreme Court of Missouri does no more than to confirm a decision of a Missouri circuit court to the effect that such latter court was without jurisdiction of certain pre-trial motions to dismiss. This Court is

without jurisdiction to review the holdings of the highest court of a State determining the limits of the jurisdiction of the courts of such State.

Taylor v. St. Louis, I. M. & S. R. Co., 210 U. S. 281, 285, 28 S. Ct. 616, 52 L. Ed. 1061;
Chambers v. Baltimore & O. R. Co., 207 U. S. 142, 28 S. Ct. 34, 52 L. Ed. 143;
John v. Paullin, 231 U. S. 583, 34 S. Ct. 178, 58 L. Ed. 381.

IV.

The Supreme Court of Missouri did not err in its interpretation of the **Miles** and **Kepner** cases. Those cases, earlier cases decided by this Court, and recent legislative history, showing an intent on the part of Congress to continue to assure a hearing in the state courts in such cases, conclusively demonstrate the correctness of the holding of the Supreme Court of Missouri that matters of expense, inconvenience or harassment cannot frustrate the privilege of selection of forum in the state courts given by the Federal Employers' Liability Act to an injured employee —that is to say, that the doctrine of forum non conveniens is not applicable to actions brought under that act in state courts when their jurisdiction, as prescribed by local laws, is adequate to the occasion.

Miles v. Illinois Central R. Co., 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129;
Kepner v. Baltimore & O. R. Co., 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28;
Mondou v. New York, N. H. & H. R. Co., 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327;
McKnett v. St. Louis & S. F. R. Co., 292 U. S. 230, 54 S. Ct. 690, 78 L. Ed. 1227;
Hoffman v. State ex rel. Foraker, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905;

Denver & R. G. W. R. Co. v. Terte, 284 U. S. 284, 52 S. Ct. 152, 76 L. Ed. 515;
Act of June 25, 1948, c. 646, 62 Stat. 869 et seq.;
28 U. S. C. A. §1404 (a);
Act of June 25, 1948, c. 646, §18, 62 Stat. 989;
28 U. S. C. A. §1445 (a);
Gulf Oil Corporation v. Gilbert, 330 U. S. 501, 67 S. Ct. 839, 91 L. Ed. 1055;
Ex parte Collett, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed.

V.

The Supreme Court of Missouri, in its opinion below, did not construe Section 6 of the Federal Employers' Liability Act so as to invade the fundamental right of the states to regulate and control the venue and procedure of their courts. On the contrary, it made no mention of such Section 6, and it specifically held that the Federal Employers' Liability Act did not compel, but permitted, the courts of the states to take jurisdiction of actions under that act.

State ex rel. Southern R. Co. v. Mayfield, 359 Mo. 827, 224 S. W. 2d 105, 110 [4];
Printed record in these causes, p. 74.

VI.

The enactment of Section 1404 (a) of the Judicial Code, in the light of the entire Act of June 25, 1948, c. 646, 62 Stat. 869 et seq., does not demonstrate any general federal policy to favor the application of forum non conveniens to Federal Employers' Liability cases in state courts. On the contrary, when that entire act is considered, and particularly Section 18 thereof and Section 1445 (a) of the Judicial Code, the general federal policy is demonstrated to be to continue in effect the doctrine of the **Miles** case to

the effect that forum non conveniens is not applicable in such cases in the state courts.

Section 1404 (a), Judicial Code [28 U. S. C. A., § 1404 (a)];
Act of June 25, 1948, c. 646, § 18, 62 Stat. 989;
Cinema Amusements, Inc., v. Loew's, Inc., D. C. Del., 85 F. Supp. 319, 322;
Ex Parte Collett, 337 U. S. 55, 69 S. Ct. 944, 95 L. Ed. ....

VII.

The doctrine of forum non conveniens, if applied to an action under the Federal Employers' Liability Act in a state court by a non-citizen, where the state declines to apply such doctrine to such actions by its citizens, would violate the Privileges and Immunities and the Due Process of Law clauses of Article IV, Section 2, and of the 14th Amendment, of the Constitution of the United States.

Cole v. Cunningham, 133 U. S. 107, 10 S. Ct. 271, 33 L. Ed. 538;
Chambers v. Baltimore & O. R. Co., 207 U. S. 142, 28 S. Ct. 34, 52 L. Ed. 143;
Missouri Pacific R. Co. v. Clarendon Boat Oar Co., 257 U. S. 533, 42 S. Ct. 210, 66 L. Ed. 354;
McKnett v. St. Louis & S. F. R. Co., 292 U. S. 230, 54 S. Ct. 690, 78 L. Ed. 1227;
Miles v. Illinois Central R. Co., 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129.

ARGUMENT.

I.

At the outset, we submit that this Court is without jurisdiction in these proceedings.

It scarcely seems necessary to analyze authorities in support of the proposition that to give this Court jurisdiction in these cases, it must appear that there is a federal question involved which is decisive, and, if the decision of the Supreme Court of Missouri rests upon a non-federal ground which independently and adequately supports the judgment of that state court, this Court will not exercise jurisdiction. While we have cited numerous authorities in support of this rule of law in our "Summary of the Argument," we shall confine our discussion to but two of them which are fairly recent.

In **Honeyman v. Hanan**, 300 U. S. 14, 18, this Court held that before it may undertake to review a state court decision, it must affirmatively appear from the record not only that the federal question was presented for decision to the highest court of the State having jurisdiction, but that the decision of the federal question was necessary to the determination of the cause. On page 21 of 300 U. S., this Court quoted approvingly from its decision in **Brown v. Atwell**, 92 U. S. 327, as follows:

> "We have often decided that it is not enough to give us jurisdiction over the judgments of the State courts for the record to show that a Federal question was argued or presented to that court for decision. It must appear that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it. Commercial

National Bank of Cincinnati v. Buckingham's Executors, 5 How. 341; Lawler et al. v. Walker et al., 14 id. 154; R. R. Co. v. Rock, 4 Wall. 180; Parmelee v. Lawrence, 11 id. 38."

In **Kalb v. Feuerstein**, 308 U. S. 433, 437, this Court further said:

"Appellees insist, however, that the Wisconsin court on rehearing rested its judgment on an adequate non-Federal ground. If that were the fact, we would not, under accepted practice, reach the State court's construction of the Federal statute."

II.

It is our position that the decision and judgment of the Supreme Court of Missouri in these cases is adequately and independently supported by a non-federal ground.

What was involved in the Supreme Court of Missouri must be borne in mind. A Missouri trial court had ruled that it had no jurisdiction or discretion to hear or determine motions to dismiss predicated upon the doctrine of forum non conveniens, because the Supreme Court of Missouri:

"* * * has announced in no uncertain terms that we have no discretion to dismiss a case merely on the ground of inconvenience and on the ground that such cases clog our dockets and burden the court with litigation that should have been brought elsewhere to the detriment of our local litigants and at the expense of our taxpayers. Such consideration might well appeal to the legislature to vest our trial courts with such discretion but in the opinion of our Supreme Court our legislature has not done so by any statute heretofore enacted but, on the contrary, has placed upon our courts the burden of taking jurisdiction in Federal

> Employers' Liability cases wherever the cause of action may have accrued and wherever the parties and witnesses may reside" (R. 28-30, 58).

The Supreme Court of Missouri had issued its alternative writs of mandamus to the trial court, commanding the trial court "to exercise your proper jurisdiction and to determine on the merits the issues presented by defendant's motion to dismiss" (R. 31, 59). Upon final hearing, the Supreme Court of Missouri quashed its alternative writs of mandamus (R. 76), stating, among other things (R. 73-74, 224 S. W. 2d, l. c. 110):

> "* * * Missouri does not have a statute similar to the New York statute which the courts of that state have held to give them discretionary power to dismiss an action brought by a non-resident as distinguished from a citizen of another state. Also, Missouri permits citizens of this state to file Federal Employers' Liability cases in its courts. To deny the same privilege to citizens of another state would violate Article 4, Section 2, of the Constitution of the United States."

and, further (R. 74, 224 S. W. 2d, l. c. 110):

> "The Federal Employers' Liability Act does not compel the courts of this state to hear cases arising under that act, but it empowers our courts to do so.
>
> "Since Missouri does allow its citizens to maintain Federal Employers' Liability actions in its courts (see the many such cases listed in the Missouri Digest) it follows that not to allow citizens of other states the right to file Federal Employers' Liability suits in our state courts would violate Article 4, Section 2, of the Constitution of the United States."

We submit that it plainly appears from the above quotations from the opinion of the Supreme Court of Missouri

in these cases, when considered in the light of what the trial court had ruled and what was before the Supreme Court of Missouri at the time with respect to the trial court's ruling, that the Supreme Court of Missouri ruled by necessary implication that, under the constitutional and statutory provisions of that State, the courts of that State were without discretion to refuse to entertain jurisdiction of actions based upon transitory causes of action—including actions arising under the Federal Employers' Liability Act—brought by citizens of that State, regardless of expense, inconvenience or harassment, and, having so ruled, was compelled to rule similarly regarding such actions brought by non-citizens. Without considering the local law of Missouri, including the constitutional and statutory provisions, the Supreme Court of Missouri could not have determined that Missouri allowed and permitted its citizens to file and maintain such actions in its courts.

If, as petitioners so aptly and correctly state at page 19 of their respective briefs:

> "In the instant case[s], the jurisdiction and venue of Missouri courts for the trial of F. E. L. A. cases derive from the Constitution and legislative acts of Missouri." (Bracketed portion supplied);

does it not follow that the decision of the Supreme Court of Missouri below is independently and adequately supported by a non-federal ground when it is based upon a holding that "Missouri does allow its citizens to maintain Federal Employers' Liability actions in its courts" (R. 74; 224 S. W. 2d, l. c. 110), and, therefore, must also allow non-citizens to do so?

The making of such a ruling by the Supreme Court of Missouri, upon the non-federal ground, predicated upon that State's constitutional and statutory provisions is con-

sistent, not only with the correct statement in petitioners' briefs (at page 19 thereof), to the effect that:

> "* * * whether or not state courts, in the trial of F. E. L. A. cases, will apply the doctrine of *forum non conveniens* in the matter of retention or relinquishment of jurisdiction in F. E. L. A. cases is a matter of state policy with which Congress has not undertaken to interfere."

but with the earlier decisions of the Missouri courts relative to the effect of such provisions of local law respecting the right of persons to institute and prosecute actions in the courts of that State based upon transitory causes of action. A review of such statutory and constitutional provisions, and the decisions of the Missouri courts under them, while evidently not deemed necessary by the Supreme Court of Missouri in its opinion below, will, we believe, be illuminating to this Court.

Article I, Section 14, of the Constitution of Missouri 1945, provides:

> "That the Courts of justice **shall** be open to **every** person and certain remedy afforded for **every** injury to person, property or character, and that right and justice shall be administered without sale, **denial** or delay." (Emphasis supplied.)[2]

Section 10 of Article I, of the Constitution of Missouri 1945, provides:

> "That **no person** shall be deprived of life, liberty or property without due process of law." (Emphasis supplied.)

Article V, Section 14, of the Constitution of Missouri 1945, provides, in part:

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2 This provision is identical with Art. II, Sec. 10, of the Constitution of Missouri, 1875, except that the word "shall" in the last clause of the present section appeared as "should" in the Constitution of 1875.

"The circuit courts shall have * * * exclusive original jurisdiction in all civil cases not otherwise provided for, * * *."[3]

Section 14 of the Civil Code of Missouri (Laws of Missouri 1943, pp. 353 et seq., l. c. 360, Mo. R. S. A. §847.14) provides:

"Section 14. Action on claims existing under law of another state may be brought in this state, how.—

"(a) Whenever a claim exists under the law of another state, action thereon may be brought in this state by

"(1) the person or persons entitled to the proceeds of such claim if he or they are authorized to bring such action by the laws of said other state;

"(2) the executor, administrator, guardian, guardian ad litem or other person empowered by the laws of said other state to sue in a representative capacity if the person or persons entitled to the proceeds of such claim are not authorized to sue in such cases under the law of said other state.

"(b) In the cases mentioned in (2) above, the proceeds of the action, resulting either from judgment or settlement, shall be paid to the person bringing such suit and such person is authorized to satisfy the judgment and execute release. Such person to whom the proceeds are paid shall have authority to distribute and pay same to the person or persons entitled thereto, according to their respective interests therein, under the laws of said other state."[4]

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[3] This is identical with the provisions of Art. VI, Sec. 22, of the Constitution of Missouri 1875.

[4] The origin of this section is found in statutes enacted by Laws of Missouri, 1891, p. 68, as amended by Laws of Missouri, 1905, p. 95, and are found as §§ 547-549, R. S. Mo. 1899; §§ 1736-1738, R. S. Mo. 1909; §§ 1162-1164, R. S. Mo. 1919; §§ 705-707, R. S. Mo. 1929; §§ 856-858, R. S. Mo. 1939.

Under the substantially identical constitutional and statutory provisions which prevailed in Missouri prior to the enactment of the Revised Statutes of Missouri 1943, and the adoption of the Constitution of Missouri in 1945 (which earlier statutory and constitutional provisions we have noted in the footnotes), it has repeatedly been held in Missouri that the circuit courts in that state have no power to decline jurisdiction of a case on the ground of forum non conveniens, although that precise terminology was not used.

In **State ex rel. Pacific Mutual Life Ins. Co. v. Grimm,** 239 Mo. 135, 143 S. W. 483, in discussing the effect of the enactment of the statutes (then §§ 1736-1737, R. S. Mo. 1909) which now constitute the substance of §14 of the Civil Code of Missouri (Laws of Missouri 1943, p. 360, §14; Mo. R. S. A., §847.14), and of the Missouri constitutional provisions, the Supreme Court of Missouri said (143 S. W., l. c. 497):

> "* * * the contention that the plaintiff's right to sue in the courts of this state rests on comity will receive notice here. Counsel for petitioner cite many cases lending support to their contention, some of which were decided by some of the most respectable courts of the country. In fact, this court and the Courts of Appeals of this state have so held in a number of cases; but upon an examination it will be seen that they were decided prior to the enactment or amendment of the statutes of this state governing this matter. Prior to such enactments it was generally considered and understood that the right of a non-resident of this state to sue on a cause of action arising in some other state, in the courts of this state, rested purely upon comity, and that our courts could, in any case where they deemed it wise and proper, decline to assume jurisdiction over or to try the case. But since the enactment of section 1736, and the amend-

ment of section 1737, R. S. 1909, such right of a nonresident no longer rests solely upon principle of 'Comity,' within the broad meaning of that word. **Those sections are binding upon all the courts of this state, and whenever a suit is brought in any court of this state, which is embraced within their provisions, no court has the legal right to decline jurisdiction over, or to try it, as it had prior to such enactments.**

* * * * * * * * *

"These statutes were under consideration in the case of Newlin v. Railroad Co., 222 Mo. 375, 121 S. W. 125, and the court there held that these statutes were founded upon comity and opened the doors of our courts to causes of action accruing under the laws of sister states. Meaning, of course, that the doors were not opened at the discretion of the court, as was formerly the case, but mandatory, in harmony and in keeping with section 2 of article 4 and section 1 of the fourteenth amendment of the Constitution of the United States, * * *"

and, further, after a discussion of some authorities (143 S. W., l. c. 498):

"Both the federal courts, and this court in the case cited, and in many more, have uniformly held that, **whenever a nonresident or a foreign corporation has a valid cause of action under the laws of this state or under the laws of any other state, he or it may sue thereon in the courts of this state, provided** legal service can be had upon the defendant, and provided, further, **that a citizen of this state, under its laws, is authorized to sue in our courts on a cause of action similar to the one sued on by said nonresident or foreign corporation**; and that, too, despite a statute of the state denying to such corporation such right to sue. Those rulings are based upon the ground that, under the constitutional provisions previously men-

tioned, all citizens of the United States are entitled to all the privileges and immunities which are granted by the laws of any state to her own citizens, as previously stated; and that any statute of a state which denies such right of such person or corporation to sue in the courts of such state is violative of said constitutional provisions, and are therefore absolutely null and void. That is not only the law as announced by those courts, but it was correctly so announced. It would be both unjust and intolerable for one state of the Union to possess the power and authority to enact a valid statute closing the doors of its courts to citizens of the United States, or of other states, and deny to them the right or privilege of suing in the courts thereof, while the citizens of such state enjoy that right or privilege. To so hold would be not only to nullify the spirit of the provisions of the federal Constitution previously mentioned, but the letter thereof as well.

"While, as previously stated, counsel for the petitioner cite some respectable authorities holding that the Legislature and courts of a state possess such power and authority; upon an examination of them it will be seen that they were decided solely upon the principle of comity, and the constitutional provisions mentioned were not considered. Consequently they have no binding effect upon this court.

"Having thus seen that **the doors of our courts**, under the law of comity, the statutes of this state as previously quoted, and the constitutional provisions before mentioned, **are ever opened to all citizens of the United States and the citizens of the various states to sue upon any valid transitory cause of action, which might be sued upon in our courts, by a citizen of this state**, it only remains for us, in this connection, to ascertain whether or not the cause of action of Mrs. Rawn, the plaintiff in the case against the petitioner,

is a valid transitory cause of action, and could a citizen of this state sue in our courts on a similar cause of action." (Emphasis supplied.)

In **Gold Issue Mining & Milling Co. v. Pennsylvania Fire Ins. Co.**, 267 Mo. 524, 184 S. W. 999, the Supreme Court of Missouri in discussing the same statutes (then §§ 1736-1737, R. S. 1909) which now constitute in substance paragraph (a) of Section 14 of the Civil Code of Missouri, it was said (184 S. W., l. c. 1015):

"From this reading of these two sections it will be noticed that they place no limitation whatever upon the persons who may bring such a suit, save, of course, that it must be brought by the party who, under the law of said state or territory, is entitled to the proceeds of said cause of action, and of course that might be either an individual or a corporation. The clear purpose of all of our statutes, when taken together, was to give full force and effect to said section 10, Art. 2, of the Missouri Constitution, which provides that, 'The courts of justice shall be opened to *every person.*' Not a part of them. Not to the citizens or residents of Missouri only, nor to the citizens of the United States only, but to all persons of the world who demand justice at the hands of our courts against any one who may be found within the jurisdiction of this state, whether resident or nonresident, individual or corporation. This is perfectly clear from the reading of that section of the Constitution which says *every person* may sue. Not only that, but the same section further provides that a 'certain remedy [shall be] afforded for *every injury to person, property or character,*' etc. This provision is not limited to *some of the injuries* that have or may be done to the person, property, and character of those mentioned in the preceding clauses, but by clear and unambiguous

words includes *every one of the character mentioned.*" (Emphasis the court's.)

And, further (184 S. W., l. c. 1016):

"* * * The test in transitory actions, as laid down by all of the authorities, is, Does the law of the state where the defendant is found provide: First, that suit may be brought upon such a cause against any and all persons found within the jurisdiction of the state, whether residents or nonresidents thereof; and, second, does the law amply provide for due process of law upon the defendant in such a case? If so, then it is wholly immaterial where the cause of action arose, and what is the residence of the defendant."

And, still further (184 S. W., l. c. 1018):

"* * * *where may suits on contracts, torts, and other transitory actions be brought?* Of course it cannot be said, nor do any of the cases cited hold, that nonresidents can sue *all persons within the jurisdiction of this state*, under the section of the Practice Act before mentioned, but they do hold that if a resident of this state can sue any or all persons within the jurisdiction of this state in the courts hereof on any transitory cause of action, under that or any other statute of this state, or under the rules of the common law, then, under said section 1 of the Fourteenth Amendment, any citizen of the United States, though residing elsewhere, whether an individual or a corporation, is guaranteed the same right to sue upon a similar cause of action in the courts of this state. In other words, the effect of that section of the Constitution is to extend to all citizens of the United States, who are residents of other states or countries, the same right to sue persons found within the jurisdiction of this state, upon the same causes of action, that is enjoyed by our citizens under the Constitution and laws of this

state, or, to express the same idea in different language, the Constitution and laws of this state, in the regard mentioned, were designed principally for the citizens of Missouri, and secondarily for all persons of the world, as previously stated; but, be that as it may, the first section of the Fourteenth Amendment extends all such constitutional provisions and statutory enactments of this state, of the character mentioned, to all citizens of the United States residing elsewhere. That is the plain meaning and effect of the ruling of the Supreme Court of the United States in the cases before cited upon this question; and also of the rulings of this court in the cases cited in connection therewith." (Emphasis the court's.)

The above quoted language from the **Grimm** case was quoted with approval in **British-American Portland Cement Co. v. Citizens Gas Co.**, 255 Mo. 1, 164 S. W. 468, 476-478, after the court there had there previously said (164 S. W., l. c. 473):

"* * * The right to sue in the courts of this state is guaranteed to every person by both the state and federal Constitutions. The provisions governing that matter are sections 10 and 30 of article 2 of the Constitution of Missouri, and section 2 of article 4, of the Constitution of the United States, and section 1 of the fourteenth amendment of the latter instrument."

And, further (164 S. W., l. c. 474-475):

"Common justice, common honesty, and good morals demand that every one should have a hearing in and upon any and all matters involving his or their lives, liberty, property, and domestic relations, all of which are guaranteed and firmly protected by both the state and federal Constitutions. * * *

* * * * * * *

"The framers of our Constitution in their wisdom and foresight clearly foresaw just such a situation as is here presented, and adopted section 10 of article 2 of our Constitution, providing that: 'The courts of justice shall be open to every person, and certain remedy offered for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay.' What language could be more comprehensive and sweeping than this? It clearly includes all citizens of the United States, be they natural or artificial persons, because the Constitution of this state recognizes both, and this court and the Supreme Court of the United States have repeatedly held that corporations are included within the meaning of the word 'citizen,' as will be later shown."

In that case the plaintiff was a West Virginia corporation, not licensed to do business in Missouri, and the corporate defendant was an Oklahoma (Indian Territory) corporation, not licensed to do business in Missouri, and the action was brought in the Circuit Court of Jackson County to recover monies paid by plaintiff on account. The Missouri Supreme Court there concluded (164 S. W., l. c. 478):

"* * * wherever a citizen of this state may sue in our courts, so may any citizen of the United States."

The above quoted language from the **Grimm** case, supra, was much more recently quoted with approval in **Burg v. Knox**, Mo. Sup., 67 S. W. 2d 96, 99, where it was further said:

"It is our opinion that the views of the Court of Appeals concerning comity and sections 705 and 706, R. S. 1929 (Mo. St. Ann., §§ 705, 706, pp. 918, 920), are not as sound as those expressed by the Supreme

Court en Banc in the case of State ex rel. Pacific Mutual Life Insurance Company v. Grimm, 239 Mo. 135, 143 S. W. 483. This court en Banc, in State ex rel. v. Landwehr, 318 Mo. 181, 300 S. W. 294, overruled its former opinion in the Grimm case on the question of the validity of service of summons on the insurance commissioner in an action against a foreign insurance company upon a policy written in another state. But the opinion in the Landwehr Case **did not disturb the expressions of the court in the Grimm Case on comity and sections 705 and 706."** (Emphasis supplied.)

We feel warranted in including in our discussion under this point the cases immediately hereinafter referred to because, although they involve actions under the Federal Employers' Liability Act, the decisions in them did not rest upon the effect of the venue provisions found in that Act, but rested instead upon general principles of law, Federal constitutional provisions and state constitutional and statutory provisions, such as we have here been discussing.

In **Wells v. Davis**, 303 Mo. 388, 261 S. W. 58, the plaintiff was the administratrix appointed by the Arkansas courts, of the estate of a deceased resident of Arkansas, who had sustained fatal injuries in Arkansas. The residence of the defendant, who was the Director General of Railroads and in charge of and operating the St. Louis-San Francisco Railway Company, as well as the residence of that company, is not shown by the opinion. The action was brought in the Circuit Court of Lawrence County, Missouri, under the Federal Employers' Liability Act. Although the doctrine of *forum non conveniens* is not referred to by name in the opinion, the **right** of the plaintiff to maintain her action in the Missouri courts, under the statutes of that State (then Sections 1162-1164, R. S. Mo.

1919) now incorporated in Section 14 of the Civil Code of Missouri, was directly involved—which, if such right existed, would preclude *forum non conveniens.* It was held that plaintiff had such right, the court saying (261 S. W., l. c. 61-62):

"The cause of action here arises under the federal act, and the party plaintiff is designated by the same law. The act supersedes all other laws upon that subject. Second Employers' Liability Cases, 223 U. S. 53, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44; St. Louis etc. R. R. Co. v. Seale, 229 U. S. 156, 33 Sup. Ct. 651, 57 L. Ed. 1129, Ann. Cas. 1914 C, 156; Seaboard Air-Line Ry. v. Horton, 233 U. S. 492, 34 Sup. Ct. 635, 58 L. Ed. 1062, L. R. A. 1915 C, 1, Ann. Cas. 1915 B, 475.

"'The laws of the United States are laws in the several states, and just as much binding on the citizens and courts thereof as the state laws are. The United States is not a foreign sovereignty as regards the several states, but is a concurrent, and, within its jurisdiction, paramount sovereignty. * * * Legal or equitable rights, acquired under either system of laws, may be enforced in any court of either sovereignty competent to hear and determine such kind of rights and not restrained by its Constitution in the exercise of such jurisdiction.' Claflin v. Houseman, 93 U. S., loc. cit. 136, 137 (23 L. Ed. 833); cited and quoted in Second Employers' Liability Cases, 223 U. S. 53, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44.

* * * * * * *

"* * * Section 1163 cannot be held to govern so as to exclude a case founded upon a cause of action under a law which thus supersedes the law of the other state where the cause of action arose, and is not a law foreign to either state.

"Section 1163 is regarded as inapplicable to exclude the right to sue, because it expresses a policy to allow the representative to sue upon this class of causes of action whenever such a cause of action has accrued within any of the other state or territorial jurisdictions of the United States, and the federal act is controlling as an expression of the constitutional power of Congress to create the right of action, and to confer it upon whom it saw fit.

* * * * * * *

"When section 1163 was enacted the power of Congress had not been exercised upon this subject, but the power existed. When exercised, it resulted in a law which took the place of the laws of the state covering the same subject.

"Section 1163 was enacted as an enabling statute, responsive to a policy then pursued severally by the states upon a certain subject. It ought not to be construed narrowly as a disabling statute in its relation to a law, universal and exclusive in effect upon that subject, to that extent taking the place of the laws of the states, enacted in the exercise of a power which always existed, and establishing a uniform policy in respect of right and of remedy."

In **State ex rel. Foraker v. Hoffman**, 309 Mo. 625, 274 S. W. 362, a plaintiff administrator, appointed by the Kansas courts, of a deceased resident of Kansas who had sustained fatal injuries in that State, brought a suit under the Federal Employers' Liability Act, in the Circuit Court of Pettis County, Missouri, for damages for the decedent's death, against a Missouri railroad corporation, operating in both Missouri and Kansas. The defendant had filed a motion to dismiss which, while not referring by name to the doctrine of forum non conveniens, averred the factual elements which would bring that doctrine into op-

eration, such as: non-residence of the plaintiff; the accrual of the cause of action in a foreign state; and the difficulties and expense of litigation at a point remote from the scene of the casualty. Upon the production of evidence to support its averments, the defendant's motion to dismiss, the trial court had sustained the motion to dismiss. Missouri Supreme Court, by its writ of mandamus, ordered the Circuit Court of Pettis County to set aside its order dismissing the plaintiff's case, and to hear and determine the action. Although the doctrine of forum non conveniens was not by name referred to in the opinion, the case involved the **right** of the plaintiff to maintain the action as against defendant's contentions of hardship by reason of conducting the trial at a place distant from the place where the cause of action accrued, and upheld that right—thereby inferentially ruling the doctrine of forum non conveniens to be without application. The ruling there was affirmed by this Court in **Hoffman v. State ex rel. Foraker**, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905.

In **Shaw v. Chicago & A. R. Co.**, 314 Mo. 123, 282 S. W. 416, the plaintiff, an Illinois resident and the administratrix appointed by the Illinois courts of the estate of a deceased Illinois resident who had been fatally injured in Illinois, brought an action in the Circuit Court of Jackson County, Missouri, under the Federal Employers' Liability Act, to recover damages for decedent's death. The citizenship and residence of the defendant does not appear in the opinion.[5] The defendant duly filed a motion to dismiss, averring in detail facts which would bring into operation the doctrine of forum non conveniens, and tending to show that trial in the forum of the action would impose hardship, inconvenience and expense upon the parties, and upon the courts and taxpayers of Jackson County. Upon

[5] The residence of defendant appears, however, to have been in Illinois, in the opinion in Bright v. Wheelock, 323 Mo. 840, 20 S. W. 2d 684, hereinafter discussed.

the motion being overruled, defendant repleaded its substance by way of answer. Following a verdict and judgment for plaintiff, on appeal the Missouri Supreme Court disposed of defendant's contentions by saying (282 S. W., l. c. 418):

> "The motion to dismiss, which was repleaded by way of answer, urges that both plaintiff and defendant are residents of Illinois; that the cause of action arose in Illinois; that to try the cause in Missouri meant the bringing of witnesses from a great distance; that the trial of such causes originating as this is an imposition upon our courts, and imposition upon the taxpayers of Jackson county, the place of trial; that such a trial would require the taking of depositions and the inconvenience and expense of getting witnesses, all to the great prejudice of the defendant. This point is fully covered by our very recent case of Wells v. Davis, 261 S. W. 58, 303 Mo. 388. The discussion there is so full and so recent that we will not rehash the subject, except to emphasize the fact that a cause of action given by the federal government, and made enforceable in the state courts, as are cases under the Employers' Liability Act, such a law is not one of a foreign country, but is one which fairly comes within the terms of section 1163, R. S. 1919, relative to our practice in this state. It is a part of the law in every state. See, also, State ex rel. v. Hoffman (Mo. Sup.), 274 S. W. 362."

Although the doctrine of forum non conveniens was not by name referred to in the opinion above quoted, the opinion and decision clearly show that doctrine to be held inapplicable by the Missouri Supreme Court in Federal Employers' Liability cases, by reason of Missouri statutory and constitutional provisions and the provisions of the Federal Constitution.

In **Bright v. Wheelock**, 323 Mo. 840, 20 S. W. 2d 684, the plaintiff, an Illinois resident, brought suit, under the Federal Employers' Liability Act, in the Circuit Court of Jackson County, Missouri, against defendants, who were Illinois residents and receivers of an Illinois railroad corporation, for injuries sustained by plaintiff in Illinois. The defendants appeared specially and filed a motion to dismiss averring, in detail, facts which would bring the doctrine of forum non conveniens into operation, similar to the motion filed in the Shaw case, supra.[6] The motion was, upon hearing, overruled, and defendants reincorporated its substance in their answer. On appeal the Missouri Supreme Court, in passing upon the propriety of the point made in defendants' motion, discussed the Shaw case, supra,[7] and regarding it said (20 S. W. 2d, l. c. 699):

> "The legal effect of our ruling in the Shaw Case, supra, is that the pleaded facts aforesaid are insufficient to constitute a defense (that is, *a bar*) to the maintenance of such action in the courts of this state. The ruling of this court in the Shaw Case follows, and is grounded upon our previous rulings in two earlier cases, involving somewhat similar facts and contentions, wherein this court, in effect, ruled such an action to be maintainable in the courts of our state. Wells v. Davis, 303 Mo. 388, 261 S. W. 58; State of Missouri ex rel. Foraker v. Hoffman, 309 Mo. 625, 274 S. W. 362."

Then, because defendants brought attention to the then recently decided case of **Douglas v. New York, N. H. & H R. Co.**, 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, the Missouri Supreme Court further said concerning the **Douglas** case (20 S. W. 2d, l. c. 700):

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6 314 Mo. 123, 282 S. W. 416.

7 314 Mo. 123, 282 S. W. 416.

"A statute of New York, providing that an action against a foreign corporation may be maintained in a court of New York by a nonresident of that state, where such foreign corporation is doing business within that state, was construed by the Court of Appeals of New York to allow and give to the courts of that state a discretion to refuse to entertain jurisdiction of a suit (under the Federal Employers' Liability Act [45 U. S. C. A., §§ 51-59]) brought in a court of New York, where the injuries sued for were inflicted in a foreign state, of which foreign state the plaintiff was a citizen and resident, and of which foreign state the defendant railroad corporation was also a citizen, although doing business in New York, where the suit was brought. The federal Supreme Court affirmed the ruling and judgment of the Court of Appeals of New York, holding that the construction given to the New York statute by the highest court of that state is not in contravention with any provision or requirement of the federal Constitution, and that there is nothing in the provisions of the Federal Employers' Liability Act (45 U. S. C. A., §§ 51-59) which requires the courts of the several states to entertain suits arising under the provisions of that act of Congress. **However, our own court has not construed the (somewhat similar) statutes of this state (sections 1163 and 1180, Rev. St. 1919)** [now, substantially, § 14 of the Civil Code of Missouri] **to invest the courts of this state with the discretion to refuse to entertain jurisdiction of such a suit. Our previous rulings, as announced in the Shaw, Wells and Foraker Cases, supra, appear to be to the effect that the statutes, supra, do not invest the courts of our state with such discretion,** and we see no good or sufficient reason for overruling, at this time, our prior decisions construing such statutes. It would seem

to us that the correction of the evil (herein complained of by respondents), if there be any evil, lies with the Legislature rather than with the judiciary. The giving of plaintiff's instruction No. 5 was proper under the law as announced by this court in the cases, supra, and was not error, * * *." (Emphasis and bracketed portion supplied.)

Instruction No. 5, referred to in the quotation last above made, read (20 S. W. 2d, l. c. 698):

"The court instructs the jury that if you find that the defendants at the time and place in question were engaged in commerce between states as defined in instruction No. 1, then the plaintiff had the right to bring and prosecute this suit in this county and state and the fact that the Chicago & Alton Railroad Company is incorporated in Illinois, or that the plaintiff and defendants are residents of that state, or that the injury occurred there, or that plaintiff might have sued in the courts of that state, does not constitute a defense to this cause of action."

The opinion in the **Bright** case, supra, while not mentioning by name the doctrine of forum non conveniens, had under consideration every element necessary to invoke that doctrine, and the Missouri Supreme Court there was asked to invoke it, but declined to do so, and clearly and unequivocally held that such doctrine has no application in that state because its Constitution and statutes (a) give a **right** to all persons to maintain in the courts of that state any action which a resident of that state might maintain therein, and (b) divest the courts of that state of any discretion to refuse to entertain any such action.

The conclusion reached by the Supreme Court of Missouri in the cases now before this Court, as well as the conclusions reached by that court in the earlier cases be-

fore it involving the Federal Employers' Liability Act which are just above referred to, are founded upon the local laws of Missouri, rather than upon any interpretation of that federal act. Such conclusions are identical with that recently arrived at by the decision of the Supreme Court of Alabama in **Ex parte State ex rel. Southern Ry. Co.**, Ala., 47 So. 2d 249, which involved a situation identical with that here involved, and which is predicated entirely upon the local laws of Alabama.

Thus it is apparent that in the cases at bar, the Supreme Court of Missouri rested its judgment upon a construction of the Missouri constitutional and statutory provisions which, independently of any federal question, and adequately, supported that judgment. Accordingly, we submit, it appears that the decision of any federal question argued and presented to that court was unnecessary to its determination of these cases, and is not for consideration here because of lack of jurisdiction of this Court.

III.

If we approach the matter from another angle, lack of jurisdiction in this Court is also apparent.

Actually, what the Supreme Court of Missouri did in the cases at bar was nothing more than to determine the limits of the jurisdiction of one of the *nisi prius* courts of general jurisdiction of that state. The trial court had ruled itself to be without jurisdiction or discretion to entertain pre-trial motions to dismiss in two separate, but similar, cases involving transitory actions arising outside Missouri (R. 28-30, 58). The Supreme Court of Missouri, upon application of the movants, had issued its alternative writs of mandamus to compel the trial court to exercise jurisdiction and determine such motions on their merits (R. 30-31, 59). On final hearing, the Supreme Court

of Missouri ruled that its alternative writs of mandamus be quashed, upon the theory that the trial court was without jurisdiction to hear and determine such motions. Petitioners here are seeking to have this Court declare that ruling of the Supreme Court of Missouri to be erroneous, and to have this Court define the limits of the jurisdiction of the Missouri trial court. This, we submit, presents no federal question which would give this Court jurisdiction.

A similar situation was presented in **St. Louis, I. M. & S. R. Co. v. Taylor,** 210 U. S. 281. There, an action under the Federal Safety Appliance Act was brought in the Arkansas state courts for fatal injuries which occurred in the Indian Territory, and the plaintiff recovered a judgment which was affirmed by the Supreme Court of Arkansas. This Court there held that the question of jurisdiction of the Arkansas courts was not a federal question, and that this Court had no jurisdiction to review the rulings of the Arkansas courts holding that they had jurisdiction, saying (210 U. S., l. c. 285):

> "The plaintiff in error contends that of such a cause, triable as it was in the courts of the territory created by Congress, the courts of Arkansas have no jurisdiction. **This contention does not present a federal question.** Each state may, subject to the restrictions of the Federal Constitution, determine the limits of the jurisdiction of its courts, the character of the controversies which may be heard in them, **and specifically, how far it will, having jurisdiction of the parties, entertain in its courts transitory actions where the cause of action has arisen outside its borders.** Chambers v. Baltimore & O. R. Co., 207 U. S. 142, ante, 143, 28 Sup. Ct. Rep. 34. We have, therefore, no authority to review the decisions of the state court, so far as it holds that there was jurisdiction to hear and determine this case. **On that question the decision of that court is final.**" (Emphasis supplied.)

In **Chambers v. Baltimore & O. R. Co.**, 207 U. S. 142, cited in the above quotation, this Court had said (207 U. S., l. c. 147):

> "But, subject to the restrictions of the Federal Constitution, the state may determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them."

In **John v. Paullin**, 231 U. S. 583, 585, this Court first said:

> "Without any doubt, it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and **the State law and practice in this regard are no less applicable when federal rights are in controversy than when the case turns entirely upon questions of local law.**" (Emphasis supplied.)

So, here, the mere fact that the actions in the Missouri trial court involved rights under a federal statute—the Federal Employers' Liability Act—does not make any less applicable the Missouri law respecting the jurisdiction of its courts and the limits of that jurisdiction. The ruling of the Missouri trial court was that it had no jurisdiction over the merits of the motions to dismiss filed with it, and its decision was based entirely upon Missouri law (R. 28-30). The Supreme Court of Missouri, by quashing its alternative writs of mandamus issued to compel the trial court to exercise jurisdiction over the merits of such motions, in effect did no more to affirm the ruling of the trial court, and, in any event, did no more than define the limits of the trial court's jurisdiction. The correctness of that ruling by the Supreme Court of Missouri presents no federal question, and is an independent and adequate basis for the judgment of the Supreme Court of Missouri quashing its alternative writs of mandamus. This Court

is, accordingly, without jurisdiction to review that ruling of the Supreme Court of Missouri by the instant certiorari proceedings.

IV.

Petitioners also assert that the Supreme Court of Missouri erred in its interpretation of the opinions of this Court in **Miles v. Illinois Central R. Co.**, 315 U. S. 698, and **Kepner v. Baltimore & Ohio R. Co.**, 314 U. S. 44. If that were so, it would not warrant this Court in reversing the Supreme Court of Missouri because, as we have demonstrated under points I to III of this brief, the decision of the Supreme Court of Missouri below is independently and adequately supported by a non-federal ground.

However, we believe that the Supreme Court of Missouri did not err in its interpretation of the **Miles** and **Kepner** cases. Those cases are significant here, and were significant to the Supreme Court of Missouri in arriving at its opinion below, because they demonstrate and rule that matters of expense, inconvenience and harassment—which are the bases of the doctrine of forum non conveniens—can not be utilized as the basis for depriving an injured employee of the privilege of venue granted by the Federal Employers' Liability Act with respect to both the federal and state courts.

In the **Kepner** case this Court held that the act conferred "a plain grant of privilege" to the employee in the selection of a forum, and said (315 U. S., l. c. 53-54):

> "The privilege was granted because the general venue provisions worked injustices to employees. It is obvious that no state statute could vary the venue; and, we think, equally true that no state court may interfere with the privilege, for the benefit of the carrier or the national transportation system, on the ground of inequity based on cost, inconvenience or harass-

ment. * * * **A privilege of venue, granted by the legislative body which created this right of action, cannot be frustrated for reasons of convenience or expense.** If it is deemed unjust, the remedy is legislative * * *." (Emphasis supplied.)

In the **Miles** case, this Court said (315 U. S., l. c. 703-704):

"In the legislative history of section 6 [of the Employers' Liability Act] the provision that removal may not be had from a 'State court of competent jurisdiction' was added to the House bill on the floor of the Senate and later accepted by the House, **in order to assure a hearing to the employee in a state court.** Words were simultaneously adopted recognizing the jurisdiction of the state courts by providing that the federal jurisdiction should be concurrent. The venue of state court suits was left to the practice of the forum. The opportunity to present causes of action arising under the F. E. L. A. in the state courts came, however, not from the state law but from the federal. By virtue of the Constitution, the courts of the several states must remain open to such litigants on the same basis that they are open to litigants with causes of action springing from a different source. This is so because the Federal Constitution makes the laws of the United States the supreme law of the land, binding on every citizen and every court and enforceable wherever jurisdiction is adequate for the purpose. Second Employers' Liability cases (Mondou v. New York, N. H. & H. R. Co.), 223 U. S. 1, 56-59, 32 S. Ct. 169, 177, 178, 56 L. Ed. 327, 38 L. R. A., N. S., 44. **The Missouri court here involved must permit this litigation.** To deny citizens from other states, suitors under F. E. L. A., access to its court would, if it permitted access to its own citizens, violate the Privileges and Immunities Clause. Constitution, Art. IV, Sec. 2; Mc-

Knett v. St. Louis & S. F. Ry. Co., 292 U. S. 230, 233, 54 S. Ct. 690, 691, 78 L. Ed. 1227. Since the existence of the cause of action and the privilege of vindicating rights under the F. E. L. A. in state courts spring from federal law, the right to sue in state courts of proper venue where their jurisdiction is adequate is of the same quality as the right to sue in federal courts. It is no more subject to interference by state action than was the federal venue in the Kepner case." (Emphasis and bracketed portion supplied.)[8]

And, further (315 U. S., l. c. 705):

"As Congress has permitted both state and federal suits, its determination that the carriers must bear the incidental burden is **a determination that the state courts may not treat the normal expense and inconvenience of trial in permitted places, such as the one selected here, as inequitable and unconscionable.**" (Emphasis supplied.)

And in Mr. Justice Jackson's concurring opinion, it was said (315 U. S., l. c. 706):

"That such a privilege puts a burden on interstate commerce may well be admitted, **but Congress has the power to burden.**" (Emphasis supplied.)

These statements in the **Miles** and **Kepner** cases merely restated what this Court had ruled over the years.

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[8] A footnote to this part of the opinion is also of interest, for it reads:

"Chambers v. Baltimore & Ohio R. Co., 207 U. S. 142, 28 S. Ct. 34, 52 L. Ed. 143, or Douglas v. New York, New Haven R. Co., 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, do not impinge upon this principle. In the former case an Ohio statute forbade suits in its courts for wrongful death occurring in another state unless the decedent was a citizen of Ohio. This Court saw no discrimination against personal representatives of any decedent since their right to sue did not depend upon their citizenship but upon the citizenship of their decedent. In the latter case a statute of New York, which gave only discretionary jurisdiction to suits by non-residents but compulsory jurisdiction to suits by residents, was held valid because it treated citizens and non-citizens alike and tested their right to maintain an action by their residence or non-residence" (315 U. S., l. c. 702, n. 6).

In **Mondou v. New York, N. H. & H. R. Co.**, 223 U. S. 1, one of the Second Employers' Liability Cases, this Court held that rights arising under the Federal Employers' Liability Act could "be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion" (223 U. S., l. c. 55, 59), and went on to say (223 U. S., l. c. 58):

> "We are not disposed to believe that the exercise of jurisdiction by the state courts will be attended by any appreciable inconvenience or confusion; but, be this as it may, it affords no reason for declining a jurisdiction conferred by law. **The existence of the jurisdiction creates an implication of duty to exercise it, and that its exercise may be onerous does not militate against that implication.**" (Emphasis supplied.)

Later, in **McKnett v. St. Louis & S. F. R. Co.**, 292 U. S. 230, this court re-affirmed that doctrine, saying (292 U. S., l. c. 233):

> "By Mondou v. New York, New Haven & Hartford R. R., 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44, an action in a Connecticut court against a domestic corporation, it was settled that a state court whose ordinary jurisdiction as prescribed by local laws is appropriate for the occasion, may not refuse to entertain suits under the Federal Employers' Liability Act."

Later, in **Hoffman v. State ex rel. Foraker**, 274 U. S. 21, affirming 309 Mo. 625, 274 S. W. 362, wherein a Missouri state court was by mandamus compelled to take jurisdiction over an action under the Federal Employers' Liability Act, brought by a Kansas administrator of a deceased Kansas resident, who was killed in Kansas, this Court extended the earlier doctrine somewhat, and tersely said (274 U. S., l. c. 23):

"It [the carrier] must submit, if there is jurisdiction, to the requirements of orderly, effective administration of justice, **although thereby interstate commerce is incidentally burdened.**" (Emphasis supplied.)

To the same effect is **Denver & R. G. W. R. Co. v. Terte,** 284 U. S. 284, where a Missouri state court was ordered to proceed to trial irrespective of the number of witnesses within and without the state, and irrespective of the relative convenience of the parties, in an action under the Federal Employers' Liability Act brought by a nonresident against a foreign railroad corporation for injuries sustained in Colorado. This Court there said (284 U. S., l. c. 287-288):

"Further, as a practical matter, **courts could not undertake to** ascertain in advance of trial the number and importance of probable witnesses within and without the state and **retain or refuse jurisdiction according to the relative inconvenience of the parties.**" (Emphasis supplied.)

It is, of course, true that the privilege of venue in Federal Employers' Liability cases in the federal courts, as broadly mentioned in the **Kepner** case, has been limited to a degree by Section 1404 (a) of the Judicial Code as recently revised [28 U. S. C. A., §1404 (a); Act of June 25, 1948, c. 646, 62 Stat. 937], providing for a "transfer" of cases "for the convenience of the parties." This was indicated by this Court to have been prompted by the suggestion in the **Kepner** case that any remedy should be legislative (**Ex parte Collett,** 337 U. S. 55, l. c. 57-58, 60-61). **The history of that same legislation, however, indicates quite clearly that it was in no wise to affect the privilege of venue in Federal Employers' Liability cases in state courts as it had previously existed.** By Section 18 of the same act which revised the Judicial Code (Act of June 25, 1948, c. 646, §18, 62 Stat. 989), there was re-

pealed that portion of Section 6 of the Federal Employers' Liability Act which had read:

> "* * * and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

At that same time and by that same act, there was enacted Section 1445 (a) of the Judicial Code [28 U. S. C. A., §1445 (a)] which provides:

> "A civil action in any State court against a railroad or its receivers or trustees, arising under sections 51-60 of Title 45, may not be removed to any district court of the United States."

By this legislation, the Congress certainly made quite plain an intention on its part that Federal Employers' Liability cases in the state courts were not to be affected by Section 1404 (a) of the Judicial Code, as revised—for the Congress meticulously preserved the non-removability of such cases to the federal courts where that section could take effect upon them. The intent of the Congress to "assure a hearing to the employee in a state court" of competent jurisdiction, so aptly explained in the **Miles** case (315 U. S., l. c. 703), was affirmed and confirmed, as was doctrine of that case (315 U. S., l. c. 705, 706), and of the earlier cases (**Hoffman v. State ex rel. Foraker**, 274 U. S. 21, 23; **Denver & R. G. W. R. Co. v. Terte**, 284 U. S. 284, 287-288), which the Congress must have had in mind, that the privilege of bringing actions under the Federal Employers' Liability Act in state courts, where their jurisdiction is adequate to the occasion, cannot be interfered with on the grounds of expense, inconvenience or harassment—which grounds, we repeat, are the bases for the doctrine of forum non conveniens.

The Supreme Court of Missouri, in its interpretation of the **Miles** and **Kepner** cases, held no more than this, which

is in complete harmony with those cases, the earlier decisions of this Court, and the legislative intent of the Congress in its revision of the Judicial Code. The Supreme Court of Missouri did go on to twice rule that Missouri permits its citizens to institute and maintain Federal Employers' Liability cases in its courts (R. 74, 224 S. W. 2d, l. c. 110)—which is but another way of saying that the jurisdiction of the Missouri courts is appropriate to the occasion—and concluded that the non-citizen plaintiffs in the Blevins and Seachris cases here involved were neither subject to having their actions dismissed upon the forum non conveniens doctrine, nor to otherwise be deprived of the same right which was accorded to citizens of Missouri to maintain their cases in the courts of that state.

Under these circumstances, we submit, the Supreme Court of Missouri was correct, and did not erroneously interpret either the **Miles** or the **Kepner** cases, when it ruled:

> "* * * it is clear that under the Kepner and Miles cases, supra, a state court cannot dismiss a Federal Employers' Liability case solely under the forum non conveniens doctrine" (R. 73; 224 S. W. 2d, l. c. 109).
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> * * * * * * *
>
> "Under the Kepner and Miles cases, supra, the doctrine of forum non conveniens is not open to relators in the two Federal Employers' Liability cases in question" (R. 75; 224 S. W. 2d, l. c. 110).

Compare, also, **Leet v. Union Pacific R. Co.**, 25 Cal. 2d 605, 155 P. 2d 42, 158 A. L. R. 1008, certiorari denied 325 U. S. 866, 65 S. Ct. 1403, 89 L. Ed. 1986.

The Court itself, since the decision in the **Miles** case, has twice said that decision rules that forum non conveniens is not available in Federal Employers' Liability cases in State courts (Cf. **Gulf Oil Corporation v. Gilbert,**

330 U. S. 501, 505; **Ex Parte Collett**, 337 U. S. 55, 57). Certainly, there can be no error in the similar ruling of the Supreme Court of Missouri below, unless there has been some change in either the statutory or decisional law since, and that there has been none is plain. No more recent authority then **Ex Parte Collett**, supra, has been cited by petitioners, and that case was decided in 1949, since the revision of the Judicial Code in 1948 which we have discussed above.

Petitioners make extensive argument that this Court, in **Douglas v. New York, N. H. & H. R. Co.**, 279 U. S. 377, "settled the question" that the application of the doctrine of forum non conveniens may be applied by a state court in Federal Employers' Liability cases, and petitioners contend, in that connection, that the Supreme Court of Missouri misconstrued the **Douglas** case when it stated that it rested upon a New York statute (Petitioners' briefs, pp. 15-16). These contentions are untenable.

The **Douglas** case does not even mention the term "*forum non conveniens.*" That the **Douglas** case was predicated upon a particular New York statute has been clearly pointed out by this Court, as well as by other courts. In **Miles v. Illinois Central R. Co.**, 315 U. S. 698, 704, footnote 6, this Court said that the decision in the **Douglas** case was based upon "a statute of New York, which gave only discretionary jurisdiction to suits by non-residents but compulsory jurisdiction to suits by residents, * * * treated citizens and non-citizens alike and tested their right to maintain an action by their residence or non-residence." As we have heretofore pointed out, ante, pp. 31-33, the decision in **Bright v. Wheelock**, 323 Mo. 840, 20 S. W. 2d 684, similarly construed the **Douglas** case. The Supreme Court of Minnesota, in construing the **Douglas** case in **Bright v. Chicago, R. I. & P. R. Co.**, 180 Minn. 42, 230 N. W. 450, 467, said:

"The state court in the Douglas Case held that the law of New York was not unconstitutional in permitting its courts in the exercise of their discretion to reject jurisdiction. **If it had held otherwise, it would have been sustained by the Supreme Court, for it was construing its own statutes; or, if not, it was determining its local law.** In short, the Supreme Court said that under the New York statute as construed there was nothing offensive to the Federal Constitution. **We have no statute like that of New York.** Our law from the beginning has permitted without giving discretion suits such as the one before us. To refuse jurisdiction, the Constitution aside, would result in a complete change of the local law—a change which we do not wish to make. And this may be noted: If there were no privileges and immunities clause in the Constitution, such actions as this could be maintained under our repeated holdings—under our law from the earliest times; and, of course, the privileges and immunities clause does not lessen the plaintiff's rights." (Emphasis supplied.)

The case of **Murnan v. Wabash R. Co.**, 246 N. Y. 244, 158 N. E. 508, also relied upon by petitioners here, involved exactly the same statute of New York as was involved in the Douglas case just above discussed. There, as in the Douglas case, the power to decline jurisdiction had its origin in a valid state statute. We repeat, no such statute exists in Missouri.

Actually, the **Douglas** case supports our position here. The vital element present there, and lacking here, was a valid state statute vesting discretionary power in the state trial court to decline to exercise jurisdiction by dismissing the plaintiff's action. That there is no such discretion under the statutes of Missouri was made plain in **Bright v. Wheelock**, 323 Mo. 840, 20 S. W. 2d 684, 700, hereinbefore

quoted at length, ante, pp. 31-33, where the **Douglas** case was discussed, and was further made clear by the Supreme Court of Missouri in its decision below where, in referring to the **Douglas** case, it said (R. 73-74; 224 S. W. 2d, l. c. 110):

> "We do not think this case sustains the relator. The common law doctrine of forum non conveniens is not even mentioned in the opinion. In the first place, Missouri does not have a statute similar to the New York statute which the courts of that state have held to give them discretionary power to dismiss an action brought by a non-resident as distinguished from a citizen of another state."

The language of the **Douglas** case itself distinguishes that case, and the situation there, from the cases at bar, and the situation here. In the **Douglas** case, this Court said (297 U. S., l. c. 387-388):

> "It may very well be that if the Supreme Court of New York were given no discretion [by the statutes of that state], it would be under a duty." (Bracketed portion supplied.)

The duty which this Court there had in mind was, undoubtedly, that to take jurisdiction and hear the case, under the doctrines of the earlier decisions to the effect that the state courts must take jurisdiction where their jurisdiction, as prescribed by local laws, is appropriate to the occasion (**Mondou v. New York, N. H. & H. R. Co.**, 223 U. S. 1, 55, 59; **McKnett v. St. Louis & S. F. R. Co.**, 292 U. S. 230, 232-233), irrespective of matters of expense, inconvenience or harassment (**Hoffman v. State ex rel. Foraker**, 274 U. S. 21, 23)—which doctrines were subsequently carried into the later decisions (**Denver & R. G. W. R. Co. v. Terte**, 284 U. S. 284, 287-288; **Miles v. Illinois Central R. Co.**, 315 U. S. 698, 705).

The very most that can be said about the **Douglas** case is that it holds that, subject to the restrictions of the Federal Constitution, a state, by its policy as announced by its local laws, may determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them—a proposition which is not disputed by us and which was recognized by the Supreme Court of Missouri in its decision below when it said (R. 75; 224 S. W. 2d, l. c. 110):

> "The Federal Employers' Liability Act does not compel the courts of this state to hear cases arising under that act, but it empowers our courts to do so."

The **Douglas** case, of a certainty, cannot be perverted so as to constitute authority that **all** state courts have a right or discretion to decline jurisdiction of transitory causes of action—whether predicated upon the Federal Employers' Liability Act, or otherwise—irrespective of a policy of the particular state, as determined by its local laws, to give all persons access to its courts in such cases. Such a holding would be inconsistent with what petitioners here characterize as "the fundamental right of the states to regulate and control the venue and procedure of state courts" (Petitioners' briefs, p. 26). Such a holding would, also, be inconsistent with the decision in the **Miles** case (315 U. S. 698), which clearly ruled that forum non conveniens was not applicable to Federal Employers' Liability cases in state courts, and went on to point out (in footnote 6) that such a doctrine was not in conflict with the **Douglas** case.

V.

Petitioners also contend that the construction which the Supreme Court of Missouri placed upon Section 6 of the Federal Employers' Liability Act invades the fundamental right of the states to regulate and control the venue and procedure of state courts.

We think this contention is due to a misconception of what the Supreme Court of Missouri decided. We have carefully read the opinion of the Supreme Court of Missouri below, and we find that it nowhere adverts to Section 6 of the Federal Employers' Liability Act, excepting in its quotations from the opinions of this Court. The Supreme Court of Missouri did not conclude, as petitioners aver, that "the Congress undertook to regulate and control the venue and procedure in state courts in actions under the Act" (Petitioners' briefs, p. 26). On the contrary, it clearly recognized that the Federal Employers' Liability Act does not compel the courts of Missouri to hear cases arising under that act, but it empowers the Missouri courts to do so (R. 74; 224 S. W. 2d, l. c. 110), and went on to hold that since Missouri permits its citizens to maintain in its courts transitory actions based on that act (R. 74; 224 S. W. 2d, l. c. 110), the jurisdiction of the Missouri courts was "appropriate to the occasion" and could not deny similar access to other persons without violating Article 4, Section 2, of the Constitution of the United States (R. 74, 74-75; 224 S. W. 2d, l. c. 110), and without depriving such persons of the right to sue in state courts of proper venue where their jurisdiction is adequate, which this Court in the **Miles** case characterized as "springing from the federal law" and being "of the same quality as the right to sue in federal courts."

The Supreme Court of Missouri has not done what petitioners assert it has done. Petitioners have merely built up and knocked down another straw man.

VI.

Petitioners also assert that, since the enactment of Sec. 1404 (a) of the Judicial Code [28 U. S. C. A., § 1404 (a)], no possible inference can now be drawn from the Federal Employers' Liability Act forbidding the application of the

doctrine of forum non conveniens by state courts to actions under that act. This contention overlooks several matters.

In the first place, such contention overlooks that Sec. 1404 (a) does not constitute a statutory codification of the doctrine of forum non conveniens. That section provides merely for a "transfer" of a cause from one federal court to another, while the doctrine of forum non conveniens requires a dismissal of the action—a distinction which is clearly made in **Cinema Amusements, Inc., v. Loew's, Inc.,** D. C. Del., 85 F. Supp. 319, 322.

In the second place, this contention overlooks the complete history of the legislation which produced Sec. 1404 (a), which we have above discussed, and which demonstrates the congressional intent "to assure a hearing to the employee in a state court" whenever and wherever the jurisdiction of such court is adequate to the occasion.

In the third place, this contention overlooks that this court, after the adoption of Sec. 1404 (a), in **Ex Parte Collett,** 337 U. S. 55, 57, reaffirmed the doctrine of **Miles v. Illinois Central R. Co.,** 315 U. S. 698, to the effect that forum non conveniens is not available in Federal Employers' Liability Act suits in state courts.

Certainly, under these circumstances, the only permissible inference is that the federal public policy as to the applicability of forum non conveniens to cases in the state courts under the Federal Employers' Liability Act is identically the same now as it was before the enactment of Sec. 1404 (a), and is that such doctrine is not applicable to such cases. This, the Supreme Court of Missouri correctly and specifically ruled when it said (R. 70; 224 S. W. 2d, l. c. 108):

"Thus, with reference to Federal Employers' Liability actions brought in state courts the law is the same now as it was before Sec. 1404 (a) was enacted."

And, further (R. 75; 224 S. W. 2d, l. c. 111):

"Under the Kepner and Miles cases, supra, the doctrine of forum non conveniens is not open to relators in the two Federal Employers' Liability cases in question."

VII.

Petitioners finally assert that the application of the doctrine of forum non conveniens in Federal Employers' Liability cases in state courts is not violative of the "Privileges and Immunities" clause of Article IV, Section 2, of the Constitution of the United States.

In this connection, petitioners assert that the decision in **Douglas v. New York, N. H. & H. R. Co.**, 279 U. S. 377, "held * * * that the application of the doctrine of forum non conveniens by a state court in a F. E. L. A. case would not violate" such constitutional provision. We submit that the **Douglas** case held no such thing. We have previously pointed out that the term "forum non conveniens" nowhere appears in the opinion in the **Douglas** case. We have also previously pointed out that in **Miles v. Illinois Central R. Co.**, 315 U. S. 698, 704, footnote 6, this Court clearly pointed out that the Douglas case avoided conflict with Article IV, Section 2, of the Constitution (which relates to "citizens" only) because the New York statute there involved tested the right to maintain an action by "residence" or "non-residence," rather than by "citizenship."

We submit that where, as here, a state permits its citizens to institute and maintain in its courts actions predicated upon the Federal Employers' Liability Act, irrespec-

tive of where the cause of action might have arisen and irrespective of considerations of expense, inconvenience and harassment (R. 74, 74-75; 224 S. W. 2d, l. c. 110), to deny citizens of other states that same right by the application of the doctrine of forum non conveniens would clearly violate Article IV, Section 2, of the Constitution of the United States (**Cole v. Cunningham**, 133 U. S. 107, 113-114; **Chambers v. Baltimore & O. R. Co.**, 207 U. S. 142, 148; **Missouri Pacific R. Co. v. Clarendon Boat Oar Co.**, 257 U. S. 533, 535; **McKnett v. St. Louis & S. F. R. Co.**, 292 U. S. 230, 233; **Miles v. Illinois Central R. Co.**, 315 U. S. 698, 704). That is what the Supreme Court of Missouri held in these cases. What might be held under some other circumstances is hardly pertinent to a review of that decision of the Missouri court.

CONCLUSION.

For the reasons, and upon the authorities, hereinbefore referred to, we most respectfully submit that this Court has no jurisdiction to review the decision of the Supreme Court of Missouri in these cases, because such decision was based, independently and adequately, upon a non-federal ground, but that, in any event, the decision of the Supreme Court of Missouri was correct, in full accord with the Federal Constitution and statutes, the decisions of this Court, and the Congressional intent that injured employees in actions under the Federal Employers' Liability Act should be assured of a hearing in the state courts, when their jurisdiction, as prescribed by local laws, is adequate and appropriate.

Respectfully submitted,

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